

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 135 - HB 197

March 20, 2021

SUMMARY OF BILL: Requires a records custodian to attempt to resolve disputes with certain requestors via mediation prior to petitioning a court to enjoin the requestor from making requests. Repeals such process on July 1, 2025.

ESTIMATED FISCAL IMPACT:

Increase Local Expenditures –

Exceeds \$100/Each Year FY21-22 through FY24-25/Permissive

Other Fiscal Impact – Any impact to local government associated with agreements established through mediation cannot reasonably be determined; however, such impact is considered permissive.

Assumptions:

- The proposed language applies to requests to view public records which are:
 - Made in a manner which would cause a reasonable person to feel intimidated, threatened, or harassed; and
 - Not made for the purpose of a publication or broadcast, used for academic research, or evaluating government operations for a public purpose.
- Prior to petitioning a court, the records custodian would be required to provide notice to the requestor via certified mail requesting to mediate the dispute. The records custodian is authorized to petition a court if:
 - The requestor does not respond to the notice within 10 days;
 - The requestor rejects the opportunity to mediate; or
 - An agreement cannot be reached in mediation.
- The records custodian is responsible for selecting the mediator, and the records custodian's employer is responsible for all costs associated with mediation.
- Based on information provided by the Administrative Office of the Courts, mediation costs vary by location, but court-ordered mediation generally costs about \$50 per hour and the county court clerk maintains a list of mediators.
- An agreement entered into by both parties through mediation may include a provision as to the conduct of either party, monetary compensation for the costs or producing records, fees for the costs of mediation, or any other equitable remedy to which the parties agree.
- State agencies will not seek to initiate mediation.

- This analysis assumes the following relative to records custodians employed by local governmental entities:
 - One notice will be sent annually from FY21-22 through FY24-25 to requestors to request mediation;
 - There will be one instance of mediation annually;
 - A mediator will be selected from a list maintained by the county court clerk; and
 - Mediation will cost \$50 per hour, with sessions lasting at least two hours, for a total exceeding \$100 (\$50 per hour x 2 hours) per mediation session.
- The total permissive increase to local government expenditures for mediation sessions is estimated to exceed \$103 (\$3.35 certified notice + \$100 mediation costs) each FY21-22 through FY24-25.
- Any records custodian petitioning a court for an injunction is required to notify the Office of Open Records Counsel (OORC) within the Comptroller of the Treasury, who shall include a summary of all notifications in their annual report.
- Any impact to the OORC is considered not significant.
- Any impact to local government as a result of mutual agreements established during mediation cannot reasonably be determined due to unknown factors; however, any impact is considered permissive.
- The courts will not experience an increase in caseloads; therefore, any impact to the court system is estimated to be not significant.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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